



U.S. Department of Justice

United States Attorney
District of New Jersey
Civil Division

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September 8, 2021

BY ECF

The Honorable Lois H. Goodman
United States Magistrate Judge
Clarkson S. Fisher Building
& U.S. Courthouse
402 East State Street, Room 2020
Trenton, NJ 08608

Re: *Yim v. National Institute of Health*, No. 21-07031(BRM)(LHG)

Dear Judge Goodman:

I am the Assistant United States Attorney representing the National Institute of Health ("NIH") in the above case, a Freedom of Information Act ("FOIA") suit brought by *pro se* plaintiff Jin-Pyong Peter Yim. I respectfully write to update the Court concerning the status of defendants' efforts to respond in full to plaintiff's FOIA inquiry and request Your Honor set a schedule for motion practice as Mr. Yim is unwilling to negotiate in good faith with the defendants.

On August 25, 2021, the Court conducted a teleconference during which the parties advised the Court of the current status of Mr. Yim's FOIA request. At that time, defendants informed the Court that the NIH fully complied with Mr. Yim's FOIA request on April 23, 2021. (**Exhibit A & A-1**). Moreover, the defendants stated that the information Mr. Yim requested was publicly available on the NIH webpage.¹ In addition, defendants stated that on May 5 and 6, 2021, they supplied Mr. Yim with the exact NIH link to the publicly available information he requested and informed Mr. Yim that if he was unable to access the NIH web page or needed assistance with printing the information, the NIH would assist him by supplying a printed copy of the publicly available information from the NIH web page. (**Exhibits B, B-1 & C**).

¹ Since at least as early as May 5, 2021, Mr. Yim was aware that the information in his FOIA request was publicly available on the NIH web page – <https://www.covid19treatmentguidelines.nih.gov/archive/>

As Your Honor will recall, during the conference call with the Court, Mr. Yim acknowledged that he received the above information from the NIH and stated that he simply needed confirmation that a specific NIH web link would in fact lead him to the exact information responsive to his FOIA request. Mr. Yim implied that once the NIH confirmed the link, he would acknowledge that the agency had satisfied his FOIA request.

To that end, on August 26, 2021, at 12:26 p.m., the Government contacted Mr. Yim asking him to supply the exact web link he would like the NIH to certify as the responsive record to his FOIA request. **(Exhibit D)**. At 12:50 p.m., on August 26, 2021, Mr. Yim supplied the Government with the exact link he wanted certified. **(Exhibit E)**. On August 27, 2021, at 10:42 a.m., the Government replied to Mr. Yim via email confirming that the specific Ivermectin-recommendation link he sent the day before was a valid NIH link and was responsive to his FOIA request. The Government also supplied Mr. Yim with a Stipulation of Dismissal Without Prejudice for him to sign. **(Exhibit F, F-1)**.

Although Mr. Yim informed the Court that an email reply from the Government confirming the link would satisfy him, on August 27, 2021, at 11:47 a.m., Mr. Yim replied stating, "I would like this change to be reflected in the formal NIH FOIA response letter." **(Exhibit G)**. Later that day, the Government responded to Mr. Yim's new demand and requested that he supply the exact language he needed in the letter in order to satisfy him. **(Exhibit H)**. On August 27, 2021, at 1:56 p.m., Mr. Yim replied, "The language from your previous email is fine. I am interested to know if an NIH employee is willing to sign the letter." **(Exhibit I)**.

In order to continue to negotiate in good faith with Mr. Yim, the NIH agreed to create a new FOIA response letter, dated August 31, 2021 and signed by NIH FOIA Officer Gorka Garcia-Malene, which included the exact language approved by Mr. Yim **(Exhibit J, J-1, J-2)**. The new letter and another copy of the Stipulation of Dismissal was sent to Mr. Yim on September 1, 2021, at 11:26 a.m. **(Exhibit K, K-1, K-2)**.

On September 2, 2021, after receiving the new, signed FOIA response letter from the NIH, Mr. Yim filed a "status update" letter with the Honorable Zahid Quraishi claiming, "I responded in an email on August 27 that I will accept that statement as the NIH FOIA response provided that an employee of the NIH signs a document with that statement. The Defendant has not agreed to that offer." **(Exhibit L)**. As the above information and attached exhibits show, that claim is demonstrably false. Moreover, Plaintiff's own "Enclosures 3 and 4" establish that the defendants "agreed to the offer" and supplied him with a new, signed FOIA response letter as per his request. (ECF No. 14). The NIH has fully complied with Mr. Yim's FOIA request and supplied him with the publicly available information responsive to it.

Accordingly, in view of the above developments and Mr. Yim's unwillingness to accept the requested confirmation of the web link as the agency's completed response to his FOIA request, I respectfully request that the Court set a schedule for summary judgement motion practice as it is clear the defendants have fully complied with Mr. Yim's FOIA request. The Government respectfully proposes the following schedule:

- [1] Defendants' Motion for Summary judgement: **September 24, 2021;**
- [2] Plaintiff's Opposition: **October 18, 2021;**
- [3] Defendants' Reply and Opposition: **November 5, 2021**

Thank you very much for your consideration of this matter. I have enclosed a Certificate of Service.

Respectfully submitted,

RACHAEL A. HONIG
Acting United States Attorney

By: /s/ Margaret Ann Mahoney
MARGARET ANN MAHONEY
Assistant United States Attorney

cc: **BY EMAIL WITH EXHIBITS**
Jin-Pyong Peter Yim to the following email address:
Yimpjp@gmail.com

CERTIFICATE OF SERVICE

I, Margaret Ann Mahoney, Assistant United States Attorney for the District of New Jersey, hereby certify that on **September 8, 2021**, the foregoing letter to the Court providing a case status update with exhibits was sent to *pro se* plaintiff Jin-Pyong Peter Yim via email and first class mail to the following addresses:

EMAIL:

Yimpjp@gmail.com

MAILING ADDRESS:

**Jin-Pyong Peter Yim
912 Primrose Ct.
Belle Mead, NJ 08502**

/s/ Margaret Ann Mahoney

Margaret Ann Mahoney
Assistant United States Attorney

Counsel for Defendant

Dated: Newark, New Jersey
September 8, 2021